

39. A roadway guardrail system comprising:  
a guardrail;

at least one support post coupled to said guardrail and comprising an elongate body having a first portion and a second portion arranged in a substantially colinear relationship;

a frangible connection for coupling the first portion with the second portion, the frangible connection including a rotatable coupling assembly disposed between the first portion and the second portion of the elongate body; and the frangible connection oriented relative to the guardrail such that an impact with one end of the guardrail coupled the support post will tend to buckle the support post and such that the support post will resist an impact with a railface of the guardrail.

#### **REMARKS**

In the Office Action of June 14, 2001 the Examiner rejected Claims 37-38 under 35 U.S.C. § 112, first paragraph. Claims 5-12, 24-27, 32-33, 36 and 39 were indicated to be allowable.

Claim 1-4, 13-23, 29 and 31 were previously withdrawn from consideration as directed to non-elected invention. Applicant plans to file a divisional application.

Claims 37 and 38 are amended to overcome the rejection under 35 U.S.C. § 112 second paragraph. As amended Claims 37 and 38 have the same scope and are allowable subject to an interference.

In view of the above amendment, all pending claims are believed to be allowable, subject to an interference. It is requested that an interference be declared forthwith.

#### **Information Disclosure Statement**

Applicant submitted a Fifth Information Disclosure Statement and form PTO-1449 with enclosed references in compliance with 37 C.F.R. §§1.97 and 1.98 on June 11, 2001. The Examiner made no indication in the Office Action mailed

June 14, 2001 that the references submitted in that Fift Supplemental Information Disclosure Statement have been considered. Applicant respectfully requests confirmation of consideration of those references.

**CONCLUSION**

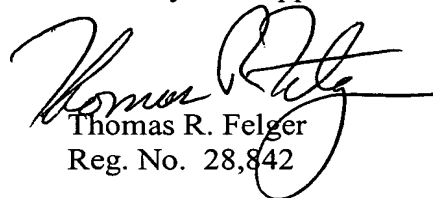
Attached hereto is a marked-up version of the changes made to the specification and claims by the current amendments. The attached pages are captioned "**Version with Markings to Show Changes Made.**"

Although Applicant believes that there are no additional fees due, the Commissioner is hereby authorized to charge any fees or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2599.

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE CLAIMS:

Claims 37 and 38 are amended as follows:

37. **(Twice Amended)** A breakaway guardrail post for highway crash control systems comprising:

an upper post member having a weak impact axis and a strong impact axis;

a lower post member disposed beneath and spaced apart from said upper post member;

a connecting joint member having a first end and a second end, said first end of said joint member connected at said first end by a first fastener to said upper post member and connected at said second end by an attachment to said lower post member, said first fastener having a first failure strength less than a second failure strength of said attachment.

38. **(Amended)** The post of Claim 37 wherein said first fastener further comprises: a first connector having a first failure strength, and a second connector having a second failure strength, said first failure strength greater than said second failure strength such that upon an impact force being applied along said weak impact axis, said second connector fails and said upper post member rotates about said first connector.